

The effect will be to overly broaden the scope of the law far past its original and historical intent. The impact will be an unreasonable increase in coverage of positive employee relations activities that would hinder the opportunities for organizations to take advantage of those opportunities, including educating their employees. The result will be the loss of valuable advice and action by organizations that will hinder those organizations providing the best work environments and working relationships with their employees. These are just some of the consequences that will predictably occur with passage of the Department of Labor's Office of Labor-Management Standards proposed rule modifying the interpretation of the "advice" exemption under the Labor Management Reporting and Disclosure Act of 1959 (LMRDA).

The practical distinctions between "advice" and "persuasion" as recognized by the Department of Labor (DOL) for more than 50 years have not changed. Absent some significant change in application of those terms then there is no justification for the DOL to eliminate that distinction and broaden their reporting requirements under the "persuader" activities that have been historically recognized. Those particular activities have a specific and individual focus, while the advice provided in most other human resources (HR) related contexts is very different and diverse. This broader "advice" includes certain employee educational and training activities that have always been outside the scope of the "persuader" definition.

Not only is the DOL's proposed action historically inconsistent and unnecessary, but the broadening of the "persuader" activities hurts employees as well. HR professionals are dealing with an increasingly complex workplace from both legal and practical perspectives. The increase in federal laws and regulations impacting human resources issues, combined with the increase in agency regulatory enforcement has amplified the need for HR professionals to utilize outside consultants for HR management and compliance.

The role of HR is to understand and value the critical role that employees play in the success of any organization. This includes maintaining compensation and benefit programs, policies and processes that ensure employee coverage and protection, and work environments that maximize employee engagement in both union and non-union workplaces. To successfully accomplish this role and provide enhanced value to both the organization and employees, HR professionals must manage and comply with a multitude of ever-changing employment laws. To accomplish their role, HR professionals must rely on access to outside consultants.

The laws and rules governing union organizing are complex and constantly changing. In the past few years, those changes have been significant as the National Labor Relations Board (NLRB) has changed many key applications of the National Labor Relations Act (NLRA). Those changes combined with the effects of other federal law changes, such as the Americans with Disabilities Act Amendments Act (ADAAA) further require that HR professionals have access to outside consultants who can provide guidance for compliance through the overlaps of the various laws.

The DOL proposed regulations overly broaden the number and types of activities that would have to be reported under the LMRDA. It is reasonable to expect that this will cause HR professionals to become hesitant on seeking the advice and counsel of outside consultants due to the unnecessary reporting and compliance obligations imposed by the proposed regulations. Similarly, our belief is that outside consultants on whom HR professionals rely for advice will stop providing critical advice on how to best comply with the law because of the increased time, finances and complexity of meeting the reporting requirements. As a consequence, the persuader rule will limit the information that organizations and their employees receive about positive employee relations opportunities, as well as hinder the information that can be provided to employees about whether or not to join a union in their workplace.

Based on these clearly detrimental effects on employees as well as organizations, including the likelihood of actually hindering employee education on union organizing, we urge you to reconsider the proposed changes to the advice exemption. We respectfully request that the advice exemption be continued as historically and successfully applied, or that the DOL step back and truly assess the need for any changes to that exemption and the actual, real effects of any changes that are proposed.

On behalf of HR Answers, Inc.,

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